



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
(Implements RCW 34.05.360)

**Agency:** Department of Health.

☒ **Permanent Rule**  
☐ **Emergency Rule**

**Effective date of rule:**

**Permanent Rules**

☒ 31 days after filing.  
☐ Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

☐ Immediately upon filing.  
☐ Later (specify)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain:

**Purpose:** These rules respond to the Governor-issued Executive Order 06-03 to establish clear and consistent sexual misconduct definitions for health care providers the Department of Health (department) regulates. These rules: 1) Eliminate redundant language that is no longer necessary since the adoption of WAC 246-16-100; 2) Reference Chapter 246-16 WAC, and 3) adopt tighter sexual misconduct standards in certain areas uniquely related to the counseling profession.

**Citation of existing rules affected by this order:**

Repealed: none  
Amended: WAC 246-809-049, WAC 246-810-049, WAC 246-930-490  
Suspended: none

**Statutory authority for adoption:** RCW 18.155.040, 18.19.050, 18.225.040, 18.205.060, 18.130.050

**Other authority :**

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR 07-21-131 on 10/23/2007 (date).

Describe any changes other than editing from proposed to adopted version: No changes have been made from the proposed adopted version.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**Date adopted:** 03/19/08

**NAME (TYPE OR PRINT)**

Mary Selecky

**SIGNATURE**

**TITLE**

Secretary

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** March 19, 2008

**TIME:** 10:16 AM

**WSR 08-07-090**

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Federal rules or standards:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Recently enacted state statutes:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted in the agency's own initiative:**

New	<u>1</u>	Amended	<u>3</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>1</u>	Amended	<u>3</u>	Repealed	<u>0</u>
<b>Pilot rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Other alternative rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

AMENDATORY SECTION (Amending WSR 06-09-032, filed 4/12/06, effective 5/13/06)

**WAC 246-809-049 Sexual misconduct.** ~~((1) A licensed counselor shall not engage in sexual contact or sexual activity with current clients.~~

~~(2) Licensed counselors shall not accept as patients or clients individuals with whom they have engaged in sexual contact or activity.~~

~~(3) A licensed counselor shall not engage in sexually harassing or demeaning behavior with clients.~~

~~(4) Sexual contact or activity with a client, or an individual who has been a client within the past two years, constitutes unprofessional conduct.~~

~~(5) Licensed counselors shall never engage in sexual contact or activity with former clients, if the contact or activity involves the abuse of the licensed counselor-client relationship.~~

~~(a) The department may consider the following factors in evaluating whether the licensed counselor-client relationship has been abusive:~~

~~(i) The amount of time that has passed since therapy was terminated, where there is no contact of any kind between licensed counselor and client;~~

~~(ii) The nature and duration of the therapy;~~

~~(iii) The circumstances of cessation or termination of therapy;~~

~~(iv) The client's personal history;~~

~~(v) The client's current mental status, emotional dependence, and vulnerability;~~

~~(vi) The likelihood of adverse impact on the client and others; and~~

~~(vii) Any statements or actions made by the licensed counselor during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.~~

~~(b) If a licensed counselor engages in sexual contact or activity with a client more than two years after the last therapeutic session, the licensed counselor has had no contact with the client during the two-year period, and the sexual activity is not abusive of the licensed counselor-client relationship the department will not consider the relationship to be unprofessional conduct.))~~ (1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to licensed marriage and family therapists, licensed mental health counselors, and licensed social workers except WAC 246-16-100 (3) and (4).

(2) A licensed marriage and family therapist, licensed mental health counselor, or licensed social worker shall never engage, or

attempt to engage, in the activities listed in WAC 246-16-100(1)  
with a former patient, former client or former key party.

NEW SECTION

**WAC 246-811-020 Sexual misconduct.** (1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to chemical dependency professionals except WAC 246-16-100 (3) and (4).

(2) A chemical dependency professional shall never engage, or attempt to engage, in the activities listed in WAC 246-16-100(1) with a former patient, former client or former key party.

AMENDATORY SECTION (Amending WSR 05-12-014, filed 5/20/05, effective 6/20/05)

**WAC 246-930-490 Sexual misconduct.** (~~((1) Sex offender treatment providers shall not engage in sexual contact or sexual activity with their clients.~~

~~(2) Sexual contact or sexual activity is prohibited with former clients for ten years after cessation or termination of professional services.~~

~~(3) The sex offender treatment provider shall not engage in sexual contact or sexual activity with any former client if such contact or activity involves the abuse of the sex offender treatment provider and client relationship. Factors to be considered in evaluating if the sex offender treatment provider and client relationship is abusive include, but are not limited to:~~

~~(a) The amount of time that has passed since the last therapeutic contact;~~

~~(b) The nature and duration of the therapy;~~

~~(c) The circumstances of cessation or termination;~~

~~(d) The client's personal history;~~

~~(e) The client's current mental status;~~

~~(f) The likelihood of adverse impact on the client and others;~~  
and

~~(g) Any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.~~

~~(4) The sex offender treatment provider shall not engage in sexual contact or sexual activity with any person participating in the treatment process of a client while the therapy is ongoing.~~

~~(5) The sex offender treatment provider shall not engage in sexual contact or sexual activity with any person formally participating in the treatment process, if such contact or activity involves the abuse of the sex offender treatment provider and client relationship. Factors to be considered in evaluating if the sex offender treatment provider and client relationship is abusive include, but are not limited to:~~

~~(a) The amount of time that has passed since the last therapeutic contact;~~

~~(b) The amount of time that has passed since the last professional contact between the provider and the other person;~~

~~(c) The knowledge the provider has obtained about the person because of the professional contact; and~~

~~(d) The likelihood of adverse impact on the former client.))~~

(1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to affiliate sex offender treatment providers and certified sex offender treatment providers except WAC 246-16-100 (3) and (4).

(2) An affiliate sex offender treatment provider or certified sex offender treatment provider shall never engage, or attempt to engage, in the activities listed in WAC 246-16-100(1) with a former patient, former client or former key party.

AMENDATORY SECTION (Amending WSR 97-17-113, filed 8/20/97, effective 9/20/97)

**WAC 246-810-049 Sexual misconduct.** ~~((1) A counselor shall not engage in sexual contact or sexual activity with current clients.~~

~~(2) Counselors shall not accept as patients or clients individuals with whom they have engaged in sexual contact or activity.~~

~~(3) A counselor shall not engage in sexually harassing or demeaning behavior with clients.~~

~~(4) Sexual contact or activity with a client, or an individual who has been a client within the past two years, constitutes unprofessional conduct.~~

~~(5) Counselors shall never engage in sexual contact or activity with former clients, if such contact or activity involves the abuse of the counselor-client relationship.~~

~~(a) The department may consider the following factors in evaluating if the counselor-client relationship has been abusive:~~

~~(i) The amount of time that has passed where there is no contact of any kind between counselor and client since therapy terminated;~~

~~(ii) The nature and duration of the therapy;~~

~~(iii) The circumstances of cessation or termination of therapy;~~

~~(iv) The client's personal history;~~

~~(v) The client's current mental status, emotional dependence and vulnerability;~~

~~(vi) The likelihood of adverse impact on the client and others; and~~

~~(vii) Any statements or actions made by the counselor during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.~~

~~(b) If a counselor engages in sexual contact or activity with a client more than two years after the last therapeutic session, the counselor has had no contact with the client during the two-year period, and the sexual activity is not abusive of the counselor-client relationship the department will not consider the relationship to be unprofessional conduct.))~~ (1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to counselors except WAC 246-16-100 (3) and (4).

(2) A counselor shall never engage, or attempt to engage, in the activities listed in WAC 246-16-100(1) with a former patient, former client or former key party.